In the Supreme Court of the United States

OCTOBER TERM, 1963

Nos. 379, 380

PAN-AMERICAN LIFE INSURANCE COMPANY,
PETITIONER

v.

MARIE LORIDO

ON PETITIONS FOR WRITS OF CERTIORARI TO THE SUPREME COURT OF FLORIDA AND TO THE DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT

MEMORANDUM FOR THE UNITED STATES

By order of the Court, dated April 6, 1964, the Solicitor General was invited to express the views of the United States with respect to this case. For the reasons outlined below, we believe that this case does not present any important question of federal law.

Respondent, the beneficiary under an insurance policy issued by petitioner upon the life of her late husband, brought this action in Florida (where she presently resides) for the payment of benefits claimed to

be due under the policy (Pet. App. 16). The policy had been issued by petitioner, a Louisiana corporation, in 1943, in New Orleans, Louisiana, and was delivered to the insured, a Cuban national, in Havana, Cuba (Pet. App. 16). It provided that payments by both parties of all obligations would be made in United States currency in New Orleans (Pet. App. 16). The insured duly paid the premiums until his death in Cuba in 1960 (Pet. App. 16).

In contesting the widow's right to the proceeds of the policy, petitioner's chief argument has been that certain decrees of the Cuban Government extinguished its liability under the policy and that, under the act-of-state doctrine, which precludes courts of this country from inquiring into the validity of foreign governmental acts committed in the foreign sovereign's territory, the Florida courts were required to give effect to the Cuban Acts. Specifically, petitioner relies upon a 1959 law allegedly making it unlawful for any Cuban national to receive payment of a debt anywhere except in Cuba (Petition 5; Pet. App. 3-4) and a 1960 law expropriating petitioner's assets in Cuba and purportedly substituting the Cuban Government as obligor with respect to petitioner's liabilities (Pet. App. 5-8). In addition to the argument that these Cuban laws and the act-of-state doctrine require an American court to recognize the petitioner's exoneration from liability under the policy, the petitioner also relies upon Article VIII(2)(b) of the Articles of Agreement of the International Monetary Fund (the Bretton Woods Agreement), 60 Stat. 1401, 1411 (Pet. App. 27).

The Circuit Court of Dade County, Florida, rejecting the petitioner's basic contentions, held that, since the place of performance under the insurance policy was the United States and not Cuba, the Cuban decrees relied upon could not relieve the petitioner from its duty to perform in accordance with the terms of the policy (Pet. App. 17-23).[1] The District Court of Appeal of Florida affirmed without opinion (Pet. App. 25), and the Supreme Court of Florida denied certiorari.

1. The Florida courts have held that the law of Louisiana (the place of performance and the place of petitioner's incorporation and principal office), and not the law of Cuba (the place of the insured's residence), determines the rights of the parties under the insurance policy which is the subject of this case. This holding presents no substantial question of federal law. In particular, the act-of-state doctrine has no application to the facts of this case.

The principle precluding inquiry by our courts into the validity of foreign acts of state, and requiring the recognition of rights derived from such governmental acts, applies only to acts affecting property or rights within the acting sovereign's territorial jurisdiction.[2]

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[1] Because the insured had made and received payments in pesos instead of dollars as a result of a 1951 Cuban monetary decree, the court held that the parties had, by their conduct, agreed to payment in pesos instead of dollars (Pet. App. 16, 17). The court did *not* find that a similar novation occurred with respect to the place of payment. This remained New Orleans, pursuant to the written contract.

[2] The only possible exception to this limitation is where there is a significant policy of our national government re-

Thus, Chief Justice Fuller's classic statement of the act-of-state doctrine is that "the courts of one country will not sit in judgment on the acts of the government of another *done within its own territory.*" (Emphasis supplied.) *Underhill* v. *Hernandez*, 168 U.S. 250, 252. See, also, *Banco Nacional de Cuba* v. *Sabbatino*, decided March 23, 1964, slip op., pp. 1, 13, 21, 28. The Cuban acts relied upon by petitioner allegedly purported to extinguish petitioner's liability to make payment in the United States and to prohibit the insured from receiving payment in the United States. To give effect to these laws would be to accord them an extraterritorial application which has never been required under the act-of-state doctrine.

The only act of the Government of Cuba which dealt with property or rights located in Cuba was the expropriation of petitioner's Cuban property. This expropriation could not determine petitioner's obligation to perform its contracts with third parties outside Cuba in circumstances where the contracts provided for performance in places other than Cuba.

2. Further review is not warranted with respect to petitioner's other contention—that granting recovery to the respondent is contrary to Article VIII(2)(b) of the International Monetary Fund Articles of Agreement. In April of this year, Cuba withdrew from the International Monetary Fund. The provisions of Ar-

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quiring that extra-territorial effect be accorded a foreign governmental act in a particular case. See *United States* v. *Belmont*, 301 U.S. 324; *United States* v. *Pink*, 315 U.S. 203. No similar federal policy exists in the present case.

ticle VIII(2)(b) are for the benefit of member states and not for the benefit of private parties. Since Cuba is no longer a member of the Fund and since the date of proposed relief determines the applicability of Article VIII(2)(b), a decree granting recovery to the petitioner will not violate the provisions of the Agreement. See *Stephen* v. *Zivnostenska Banka, National Corporation*, 140 N.Y.S. 2d 323, 326.

In the view of the United States, therefore, this case does not present any substantial question of federal law or policy.

Respectfully submitted,

ARCHIBALD COX,
Solicitor General.

MAY 1964.

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